

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 429 of 1989

Date of Decision 12.2.1992

Narasingh Choudhury

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. J. Patnaik,
H.M. Dhal,
Advocates

For the respondents

M/s. A.K. Mishra,
Standing Counsel
(Central Govt.)

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C O R A M

HON'BLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *No*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

...1....

JUDGMENT

MISS USHA SAVARA, MEMBER (ADMIN.), This original application has been filed impugning order No.S/EDDA-MC/Katerigumma, dated 14.10.1989 passed by Assistant Superintendent of Post Offices, Koraput Division, i.e. Respondent No.3 appointing Shri Lobo Khora, the Respondent No.5 to the post of E.D.D.A. without considering the claim of the applicant.

2. The case of the applicant is that he was appointed as E.D.D.A. on 1.7.1988 in place of Shri Madhab Naik as a substitute as Shri Madhab Naik proceeded on leave. Shri Madhab Naik submitted his resignation on 30.9.1988 (Annexure-2) and the applicant continued to work in his place. He also furnished a Security Bond of Rs.5 as required by Respondent No.3 in his letter dated 6.10.1988 (Annexure-3). Thereafter, Respondent No.3 invited applications for filling up the post of E.D.D.A. by an advertisement giving the minimum qualifications. The applicant also submitted his application in response to the advertisement. On 2.3.1989, the applicant was informed by Respondent No.3 that he had been appointed as E.D.D.A. on provisional basis till regular appointment could be made (Annexure-6). On 15.3.1989 Respondent No.4 was informed that Respondent No.5 had been selected provisionally for the post of E.D.D.A. and was to be taken on duty immediately. However, the applicant was not relieved and continued to perform his duties. On 25.7.1989, the Respondent No.2 told the Branch Post Master, Katrigumma i.e. Respondent No.4 that the case had been reconsidered, and the applicant may be allowed to work as E.D.D.A. on ad hoc basis till regular selection is made through Employment Exchange.

2. In pursuance to this letter, names were called from the Employment Exchange, and the applicant's name was also sponsored. However, he was not called for an interview, but on 14.10.1989 the Respondent No.3 intimated that Resp.No.5 Shri Lobo Khora had been considered for regular appointment for the post of E.D.D.A. and was to be given two days training and his joining report was to be forwarded to Respondent No.5.

3. Shri H.M.Dhal, learned counsel for the petitioner submitted that the petitioner had worked continuously from 1.7.1988. He had furnished the security Bond, as per requirements. He fulfills all the minimum qualifications inasmuch as he belongs to the village of Katirigumma, and has the educational qualifications. Shri Dhal relied upon the residential certificate given by the Tahasildar on 3.8.1989 to prove that the applicant was a resident of the village. It was also contended on behalf of the applicant that he discontinued his studies in Class IX, and therefore possessed the minimum educational qualifications prescribed for the post. Despite this, he was not called for an interview, nor was he considered for the post, and therefore, order under Annexure-10 should be quashed as being arbitrary and he should be regularised as E.D.D.A. He should also be paid the salary, which has been withheld from the month of October, 1988 still date.

4. In the counter filed by Shri A.K.Mishra, learned counsel for the Respondents, it is claimed that the applicant does not belong to the village Katirigumma.

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Reliance is placed upon the transfer certificate issued by the Kakirigumma High School in which residence of the applicant is village Patrapur, PO:Jarada, Dist:Ganjam. It is submitted that as per the procedure laid down for the recruitment of E.D.Agents, the appointment is purely by 'selection' out of the applications received from the candidates and no interview is conducted. Three applications were received in Response to the advertisement. The process of verification was undertaken and Respondent No.5 was selected for the post of E.D.D.A. taking into account his higher educational qualifications, his residential status, and the fact that he belonged to the scheduled caste. The applicant was also considered alongwith Shri Lebo Khora and Shri Baji Rout Khora, but Respondent No.5 was found to be more suitable and hence he was selected. The selection was not arbitrary, but as per prescribed procedure.

5. Shri Mishra, the learned counsel submitted that the applicant did not hand over the charge to Respondent No.5, but continued forcibly in the post though according to Annexure-6 his provisional appointment was only for a period from 29.9.1988 to 3.3.1989 or till a regular appointment is made, whichever is earlier. It was pointed out by the learned counsel that the applicant had tried to conceal facts and mislead the Tribunal and had not come with clean hands and therefore, on this ground alone, the application should be dismissed. Our attention was drawn to R.3 which is a letter addressed to the applicant on

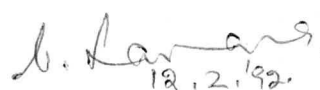
on 5.4.1989 by the Assistant Superintendent of Post Offices i.e. Respondent No.3. He was informed that his appointment stands terminated after 3.3.1989 as he was handling postal articles unauthorisedly, which was an offence. In a copy marked to Branch Post Master, Katirigumma, he was informed that Shri Lobo was deemed to have assumed charge of EDDA with effect from 30.3.1989 when he approached the Branch Post Master and was not allowed to assume. It is clarified by the learned counsel that the appointing authority is Respondent No.3, and in view of this, Annexure-A/1 directing the applicant to join in the leave vacancy of Madhab Nayak issued by Respondent No.4 is ~~invalid~~. The Branch Post Master is not empowered to accept a resignation or to issue any order as he is not the appointing authority, and therefore even Annexure-2 is ~~also~~ invalid. So far as the payment of his salary is concerned, it is subject to verification of his work which involves payment of M.O.'s and delivery of Registered letters. This verification can only be done, when he is relieved of his duties. His allowances will be released soon after his relief on complete verification.

6. Having heard both the counsel and having scrutinised all the annexures filed by them, we are constrained to reject the prayer of the applicant for quashing Annexure-10 and allowing him to continue in the post of EDDA, Katirigumma. It is not ~~disputed~~ that the applicant was a substitute EDDA, who was offered a provisional appointment on adhoc basis,

as it was not possible to make regular appointment to the said post immediately. It is clear from a reading of the annexures that the applicant continued on the post unauthorisedly, after 3.3.1989. He has no legal claim ever the past. The respondents have considered his case for appointment alongwith other candidates and have adjudged Respondent No.5 to be more suitable. In the circumstances, Annexure-10 appointing Shri Lobo Khora to the post has to be sustained, and the prayer of the applicant that his services be regularised has to be rejected.

7. In the facts and circumstances of the case, the application is dismissed as being devoid of merit. However, the respondents will release his allowance for the period that he has worked after due verification within a period of two months from receipt of a copy of this order. There will be no order as to costs.


12.2.92
VICE-CHAIRMAN


12.2.92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 1992/B.K.Sahoo